IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3458 OF 1989

1. Neoluxe India Private Limited, a company registered under the Companies Act, 1956 and having its registered office at 75, Atlanta, 209, Nariman Point, Bombay - 400 021.

2. Shri.Mahendra Bhaichand Doshi, a Director of the Petitioner No.1 residing at : 16-G, Malbar Apartments, Nepean Sea Road, Bombay - 400 036.) Petitioners.

V/s.

1. The Commissioner of Sales Tax having its office at Vikrikar Bhavan, Mazgaon, Bombay - 400 010

2. The State of Maharashtra, having their office at Mantralaya, Madam Cama Road, Bombay - 400 032.) Respondents.

Ms.Badheka, Advocate for the petitioners.

Mr.S.K.Nair for the respondents.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

JUDGMENT RESERVED ON : 26TH OCTOBER, 2007.

JUDGMENT PRONOUNCED ON : 17TH DECEMBER, 2007.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

1. This petition is filed basically to challenge the constitutional validity of Section 25 of the Maharashtra Tax Laws (Levy, Amendment and Repeal) Act, 1989 (‘amending Act’ for short) in so

far as it pertains to amending Entry 9 and Entry 61 in Part II of Schedule C to the Bombay Sales Tax Act, 1959 ('BST Act' for short) with retrospective effect from 1st July, 1981. The petitioners have also challenged various assessment orders passed for the period from 12th October, 1979 to 29th June, 1987 as well as the order in Revision dated 7th October, 2005 passed during the pendency of the present Writ Petition. However, during the course of argument, learned counsel for the petitioners did not press those reliefs and the only issue pressed in this writ petition is regarding the constitutional validity of Section 25 of the amending Act.

2. Facts relevant for the present petition are that, since 1979 the petitioners have been manufacturing 'paper based decorative laminates' ('the goods in question' for short). Petitioners claim to be the pioneers in manufacturing the goods in question. The process of manufacturing the goods in question involves treating several sheets of paper with thermosetting resins and then pressing the same under heat and pressure to form a bonded sheet. These bonded sheets are called paper based decorative laminated sheets because they are manufactured out of several layers of paper and have shining surface.

3. It is not in dispute that prior to 1st July, 1981, the goods in question were assessed to Sales Tax under Entry 19-A of Schedule E to the BST Act as goods made primarily from any kind of plastics. After 1st July, 1981 the goods in question were assessed under Entry C-II-61 of the BST Act as 'Plastic Laminates'. The petitioners have paid sales tax accordingly. The petitioners now seek to contend that since inception, the goods in question were classifiable under entry C-II-9. For easy reference, we quote hereinbelow entry 19-A of Schedule E and Entry C-II-9 and C-II-61, as they stood at the relevant time.

Entry 19A in Schedule E to the BST Act.

Sr. No.	Description of	Rate of Sales in Paise in the Rupee	Rate of General Sales tax in paise in the Rupee	Rate of Purcha-se tax in paise in the Rupee	Period of opera-tion
1.	2.	3.	4.	5.	6.
19A	Goods made primarily from any kind of plastics (other than those to which entry 53 in Schedule C or any other entry in that or any other Schedule applies, but including roofing, floor, or wall plastic tiles).				

(a) If they are roofing floor or wall tiles made from any kind of plastic material	Eight	Three	Eight	1.10.72 to 30.6.81
(b) (i) If they are laminates made from the thero-setting plastic material	Nine	Three	Nine	1.10.72 to 30.6.81
(ii) If they are other goods made from the thermo-setting plastic material	Eight	Three	Eight	1.10.72 to 30.6.81
(c) In other cases	Five	Three	Five	1.10.72 to 30.6.81

Entry C-II-9

Sr. No.	Description of	Rate of Sales Tax	Rate of Purchase Tax	Period of Operation
1.	2.	3.	4.	5.
9.	Paper, that is to say,	6%	6%	1.7.81 to-date
(i)	Cigarrate tissue			
(ii)	Blotting, filter, toilet, target tissue (other than Cigarrate tissue) Teleprinter, typewriting, Manifold, Bank, Chrome, tubsized, Cheque, stamp or Cart-ridge, Parchment and coated board (includ-ing Art Board, Chroe-board and board for playing cards).	6%	6%	1.7.81 to-date
(iii)	Printing and writing paper, wrapping paper	6%	6%	1.7.81 to

	(exculding Cellophone or P.V.C. films and sheets), Straw-board and pulpboard includ-ing greyboard corru-gated board, duplex and triplex boards, mill board, paste-board, and cardboard.			30.4.82
(iii)	Printing and writing paper, wrapping paper (excluding Cellophone or Plastic film and sheets), Straw-board and pulp board, corru-gated board, duplex and triplex boards, mill board, paste board, and card board.	6%	6%	1.5.82 to 31.3.84
(iii)	Printing and writing paper, waste paper, wrapping paper (excl-ding Cellophones or Pastic film and sheets, paper made from non-cellulose synthetic material) Straw-board, and pulpboard includ-ing greyboard corru-gated board, duplex and triplex boards, mill board, paste-board, and cardboard.	6%	6%	1.4.84 to-date
(iv)	Wall paper	12%	12%	1.7.82 to-date.

Entry C-II-61

Sr. No.	Description of	Rate of Sales Tax	Rate of Purchase Tax	Period of Operation
1.	2.	3.	4.	5.
61.	Plastic Laminates	Twelve paise in the rupee	Twelve paise in the rupee	Added from 1-7-1982

4. As stated earlier, the goods in question manufactured and sold by the petitioners during the period from 12th October, 1979 have been assessed to Sales Tax under Entry 19A in Schedule E and under Entry C-II-61 of the BST Act from 1-7-1981 and Sales Tax @ 12% has been paid by the petitioners accordingly.

5. On 14th August, 1988, the CEGAT in the case of Collector of Central Excise V/s. Melamine Fibre Board Limited reported in 36 E.L.T. 139 held that the paper based laminated sheets are not plastic sheets covered under Tariff Item 15A(2) of the Central Excise Tariff and, therefore, the paper based laminated sheets are classifiable under residuary item 68 of the Central Excise Tariff.

6. In the light of the aforesaid decision of the CEGAT which relates to interpretation of the provisions under the Central Excise Tariff, the petitioners wrote to the Commissioner of Sales Tax on 16th August, 1988 stating that the goods in question ought to have been assessed under Entry C-II-9 as ‘coated board’ at 6% and not as ‘plastic laminates’ under entry C-II-61 at 12%. Accordingly, the petitioners sought refund of the excess amount of 6% (12% - 6%) paid by the petitioners erroneously during the period from 12th October, 1979 to 29th

June, 1987 under mutual mistake.

7. Moreover, the petitioners filed an application before the Commissioner of Sales Tax, Bombay on 7/11/1988, under Section 52 of the BST Act seeking determination of the question as to whether the goods in question are properly classifiable under Entry C-II-9 or under Entry C-II-61 of the BST Act. Similar applications were also filed by two other manufacturers namely, M/s.Star Laminates Pvt. Ltd. and M/s.Weldkar Laminates Pvt. Ltd.

8. During the pendency of the above proceedings, the State Legislature by the amending Act, inter alia, amended Entry C-II-9 and C-II-61 with retrospective effect from 1st July, 1981 to the effect that the laminated sheets of all kinds including those used for surface lamination of table tops, furniture panels, partitions, etc. would be classifiable under entry C-II-61. Challenging the said retrospective amendment, the present Writ Petition is filed.

9. Entry C-II-9 and C-II-61 of the BST Act as amended by the amending Act, 1989 (to the extent relevant) reads thus :-

<u>Entry C-II-9</u>

Sr. No.	Description of	Rate of Sales Tax	Rate of Purchase Tax	Period of Operation
1.	2.	3.	4.	5.
9.	Paper, that is to say,	6%	6%	1.7.81 to 30-9-1995
	Paper (excluding items covered by entry 61 of Part II of this Schedule) that is to say --			1.7.81 to 30-9-1995

Entry C-II-61

Sr. No.	Description of	Rate of Sales Tax	Rate of Purchase Tax	Period of Operation
1.	2.	3.	4.	5.
61.	Plastic Laminates	12%	12%	1-7-1981 to 31-3-1989
(i)	Plastic Laminates or Lamination Sheets.	12%	12%	1-7-1981 to 30-9-1995
(ii)	Laminates or lamination sheets other than those covered by sub-entry (i) of the kind used for surface lamination of table tops, furniture, panels, partitions or for like purposes.	12%	12%	1-7-1981 to 30-9-1995

10. To complete the narration of facts, we may note that during the pendency of the Writ Petition, the Commissioner of Sales Tax by his order dated 30th October, 1991 has disposed of the application

filed by the petitioners under Section 52 of the BST Act by holding that in the light of retrospective amendment to Entry C-II-61 which is clarificatory in nature, the goods in question would be covered under Schedule Entry C-II-61. Admittedly, the appeal filed against said order is pending before the Appellate Authority.

11. Similarly, the Revision Applications filed by the petitioners have also been dismissed by the Commissioner of Sales Tax by his order dated 7th October, 2005 in the light of the retrospective amendment to Entry C-II-61. Although, the present Writ Petition has been amended to challenge the said order dated 7th October, 2005, as stated earlier, the learned counsel for the petitioners has restricted her arguments to the constitutional validity of the retrospective amendment to the entry C-II-9 and C-II-61 and agreed to agitate other issues before the concerned appellate authority.

12. Ms.Badheka, learned counsel appearing on behalf of the petitioners submitted that the retrospective amendment to entry C-II-9 and C-II-61 is unconstitutional, because, firstly, the impugned legislation imposes a new impost and the tax liability under the new impost cannot be retrospective. Secondly, the levy imposed by the

retrospective amendment is arbitrary, discriminatory and unreasonable on the ground of hostile discrimination. Thirdly, the retrospective amendment which seeks to defeat the just claim of a single person namely the petitioners is repugnant to Article 14 of the Constitution and also suffers from the vice of pick and choose. Fourthly, insertion of clause (ii) to entry 61 is unintelligible and vague and hence liable to be quashed and set aside. Fifthly, in anticipation of getting refund of the excess tax paid to the sales tax department, the petitioners have already refunded to their customers the excess tax of 6% collected from the said customers and paid to the sales tax department. Therefore, the retrospective amendment to the entries in the schedule to the BST Act made with a view to deprive the refund claim of the petitioners is liable to be declared as unreasonable and illegal.

13. Elaborating her arguments, Ms.Badheka submitted that the legislature can enact law retrospectively with a view to validate the existing law by removing the deficiency, if any, pointed out by a competent Court. In the present case, the goods in question being paper board / coated board ought to have been taxed under entry C-II-9 at 6%, however, the same were erroneously taxed under entry

C-II-61 at 12% from 1-7-1981. This mistake came to light when CEGAT in the case of Melamine Fibres Ltd. (supra) held that the laminated sheets are not plastic sheets. Accordingly, on realisation of the mistake that the goods in question were classifiable under entry C-II-9 and not under Entry C-II-61, the petitioners applied for revision / refund. No Court has held that the goods in question are not taxable under Entry C-II-9 and, therefore, the legislature could not have amended the said entry C-II-9 and C-II-61 retrospectively so as to exclude the goods in question from the category of 'paper board' / coated board under entry C-II-9 and purport to include the goods in question under the amended entry C-II-61. She submitted that although the State has the power to legislate retrospectively, the Legislature cannot introduce a new levy with retrospective effect. In the present case, as per the entries existing at the relevant time, the goods in question were classifiable under entry C-II-9 at 6% and not under entry C-II-61 at 12%. By the impugned legislation, it is declared that the goods in question are taxable at 12% under entry C-II-61 with retrospective effect from 1/7/1981 instead of 6% under Entry C-II-9. Such a legislation which imposes higher tax liability with retrospective effect is liable to be declared as unconstitutional. In support of the above submission, the learned

counsel for the petitioners relied upon the following decisions; Shrikrishna Enterprises V/s. State of A.P. [76 STC 67 (S.C.)], Mega Traders V/s. State of Kerala [83 STC 59] (Ker.)], Shamanur Kallappa & Sons V/s. State of Karnataka [136 STC 132 (Kar)] and V.J. Suraiya V/s. Additional Commissioner, (127 STC 575 (WBTT)].

14. Ms.Badheka further submitted that the impugned legislation is arbitrary and discriminatory, because, it purports to exclude a category of paper board / coated board from entry C-II-9 retrospectively and place the same in a newly inserted entry C-II-61(ii) with retrospective effect from 1/7/1981. She relied upon various decisions of the Commissioner of Sales Tax including the decision in the case of M/s.Super Lami Products passed on 6/1/1993, wherein, the Commissioner has held that 'Laminated File Board' are classifiable under entry C-II-9 (iii). Thus, as a result of the retrospective amendment, laminated file ;board prepared from paper are classifiable under entry C-II-9, but the goods in question also manufactured from paper is made classifiable under entry C-II-61. She submitted that there is no rational basis as to why the legislature chose to tax some of the laminated items at 6% under entry C-II-9 and some of the laminated items at 12% under entry C-II-61. The

contention is that even though it is open to the legislature to pick and choose a particular item for the purpose of taxation, within a particular category or class, the legislature cannot discriminate and choose to tax different items covered under the same category or class at different rates without any rational basis. In support of the above contention, strong reliance is placed on the following decisions, namely, Arya Vaidya Pharmacy V/s. State of Tamil Nadu reported in 73 S.T.C. 346 (S.C.), Srinivasa Poultry & Cattle Feed Pvt. Ltd. V/s. Commissioner of Commercial Taxes reported in 114 STC 67 (A.P.), Varshney General Sales & Anr. V/s. State of U.P. reported in 130 STC 202 (All), Rajashree Oils & Extractions V/s. Dy. Commissioner reported in 111 STC 668 (A.P.), State of Kerala V/s. Haji K. Kutty reported in A.I.R. 1969 SC 378, Rattan Arya V/s. State of Tamil Nadu reported in A.I.R. 1986 S.C. 1444 and S.K.Dutta V/s. Lawrence Singh reported in A.I.R. 1968 S.C. 658.

15. Relying on a decision of the Apex Court in the case of Tata Motors Ltd. V/s. State of Maharashtra reported in 136 STC 1, Ms.Badheka submitted that in the absence of any specific reason given by the State as to why entry C-II-9 and C-II-61 has been amended with retrospective effect

from 1/7/1981, the said amendment is liable to be quashed and set aside as unreasonable and arbitrary. It is submitted that though the State legislature has the power to rationalise or increase sales tax payable on certain goods, the said power cannot be exercised retrospectively.

16. Ms.Badheka further submitted that the very fact that the legislature chose to amend entry C-II-9 with retrospective effect from 1/7/1981 clearly shows that upto the date of amendment, the goods in question were taxable at 6% under entry C-II-9. If the goods in question were not covered under entry C-II-9, then, there would not have been any necessity to amend entry C-II-9. Therefore, having realised the mistake that the goods in question were taxable at 6%, but erroneously taxed at 12%, the legislature, instead of refunding the excess tax has chosen to enhance the tax from 6% to 12% retrospectively. Accordingly it is submitted that the impugned legislation enacted to defeat the refund claim of a single individual namely the petitioner No.1 who was the pioneer in the manufacture of the goods in question, cannot be said to be a legislation enacted in public interest.

17. Ms.Badheka further submitted that the customers to whom the 12% tax assessed erroneously

was passed on, started demanding from the petitioners refund of 6% in the light of the decision of CEGAT in the case of Melamine Fibres Limited (Supra). In view of the trade constraints and in anticipation of getting refund of the excess tax from the State Government the petitioners refunded the excess tax of 6% to the respective customers. The fact that the petitioners have refunded the excess tax of 6% to the respective customers is not disputed by the sales tax authorities. In these circumstances, Ms.Badheka submitted that the impugned legislation which seeks to defeat the vested right of refund accrued to the petitioners is manifestly unjust, improper, illegal and hence liable to be quashed and set aside.

18. Lastly, Ms.Badheka submitted that the newly inserted sub entry (ii) in the entry C-II-61 with retrospective effect from 1/7/1981 is totally vague and unintelligible. She submits that the word ‘lamination sheets’ in entry C-II-61(i) does not cover laminated ‘paper board’ or ‘coated board’. However, the newly inserted sub entry (ii) of entry 61 provides for taxing laminates of the kind used for surface lamination of table tops, furniture, panels, partitions or for like purposes at 12%. Since the goods in question manufactured by the petitioners are capable of being used for the

purposes, set out in entry C-II-61(ii), the same would become taxable at 12% with retrospective effect from 1st July, 1981, if sold for the purposes set out therein. It is submitted that at the time of sale it is impossible to ascertain as to whether the goods in question would be used for the purposes set out in entry 61(ii) or not. The submission is that the taxability of the goods cannot depend upon the user of the goods, because, it is impossible to ascertain at the time of sale as to which purpose the said goods would be used and, therefore, the impugned legislation which is totally vague and unintelligible is liable to be quashed and set aside.

19. Mr.Nair, learned counsel appearing on behalf of the respondents, on the other hand submitted that the impugned retrospective legislation is constitutionally valid and there no infirmity attached to it. He submitted that it is well settled in law that a word which is not defined in the enactment has to be understood in its popular and commercial sense with reference to the context in which it occurs. He submitted that paper based decorative laminated sheets are different from paper board or coated board and because of its characteristics, the goods in question were properly classified as plastic laminates under entry C-II-61.

He submitted that the retrospective amendment merely clarifies the original intention of the State legislature and the same has been accepted by manufacturers such as Bombay Trading Corporation and M/s.Greenply Industries, Calcutta and they are paying tax at 12% on sale of similar goods manufactured by them. In this connection, he relied upon a Judgment of the Apex Court in the case of State of Tamil Nadu V/s. Pyarelal Malhotra reported in 37 STC 319 (S.C.) and a decision in the case of Commissioner of Sales Tax V/s. Dunken Coffee Manufacturing Co. 35 S.T.C. 493 (Bom.).

20. Mr.Nair further submitted that since 1979 the petitioners themselves have been classifying the goods in question as plastic laminates and paying sales tax at 12% on the said goods. However, it is only after the decision of CEGAT in the year 1988 delivered under the Central Excise Act, the petitioners, as well as other manufacturers, started filing refund claims / revision claiming that the goods in question were classifiable under entry C-II-9 at 6% and not at 12% under Entry C-II-61 and sought refund of 6% sales tax erroneously paid in excess. The petitioners and other manufacturers had also filed applications under Section 52 of the B.S.T. Act seeking determination of the disputed question regarding the classification of the goods

in question in the light of the decision of CEGAT in the case of Melamine Fibres Ltd. (supra). Although, the interpretation of the entries in the Central Excise Tariff have no relevance in interpreting the entries in the schedule to the BST Act, the State legislature with a view to avoid litigation sought to amend the entries retrospectively and clarify that the goods in question were all along classifiable under entry C-II-61. He submitted that such a clarificatory legislation which brings out clearly what was included in the entry prior to its amendment cannot be said to be unconstitutional.

21. Mr.Nair submitted that the word ‘paper’ is distinct from ‘plastic laminates’ or ‘laminates’. Referring to Webster’s Dictionary, Mr.Nair submitted that the word ‘laminated plastic’ means a plastic made of superimposed layers of paper, wood or fabric, bonded or impregnated with resin and compressed under heat. The fact that the paper is one of the raw material used in the manufacture of ‘laminated plastic’, it cannot be said that the ‘laminated plastic’ is classifiable as paper. Therefore, the goods in question which have different and distinct character of plastic laminates cannot be said to be ‘paper’. In this connection, Mr.Nair relied upon the Judgments of the

Apex Court in the case of State of U.P. V/s. Kores (India) Ltd. [39 STC 8 (SC)] and Krishnamurthi & Co. V/s. State of Madras [(1973) 2 SCR 54).

22. Mr.Nair further relied on the Budget speech of the State Finance Minister delivered on 10th March, 1989 while introducing retrospective amendment to the BST Act, wherein it is stated that the amendment to entry C-II-9 and C-II-61 are made retrospectively to remove certain lacunae noticed from recent judicial pronouncements regarding the classification of the laminated goods manufactured from paper. Accordingly, Mr.Nair submitted that though the levy and collection of sales tax at 12% on the goods in question under entry C-II-61 was valid, in view of the controversies sought to be raised by the parties in the light of the judgment of CEGAT in the case of Melamine Fibres Limited (supra), the legislature thought it fit to clarify retrospectively the items covered under entry C-II-61. He submitted that such a legislation which is clarificatory in nature cannot be said to be unconstitutional merely because it is retrospective.

23. Mr.Nair further submitted that the argument of the petitioners that the impugned legislation is arbitrary and discriminatory cannot be accepted because, by the impugned legislation all the dealers

dealing in laminated plastic or plastic sheets are treated at par and taxed equally at 12%. In other words, according Mr.Nair since the petitioners as well as other manufacturers who have been manufacturing the goods in question have been uniformly taxed at 12% under entry C-II-61, it cannot be said that the impugned legislation is discriminatory.

24. Relying upon the decisions of the Apex Court in the case of ITW Signode India Ltd. V/s. Collector of Central Excise [(2004) 3 SCC 48] and Gujarat Ambuja Cement Ltd. V/s. Union of India [2005 (182) ELT 33(SC), Mr.Nair submitted that the State legislature is empowered to retrospectively amend the entries in the Schedule to the BST with a view to validating a statute. He submitted that statutes which are curative in nature are intended to operate upon and affect past transactions and, therefore, the impugned legislation which is curative in nature cannot be said to be illegal or contrary to law.

25. We have carefully considered the rival submissions as also various decisions cited by the counsel on both the sides.

26. As noted earlier, the only question to be

considered in this petition is, whether the retrospective amendment to entry C-II-9 and C-II-61 in the schedule to the BST Act is constitutionally valid or not ? To be specific, the question is, whether levy of sales tax at 12% on sale of paper based decorative laminated sheets under entry C-II-61 by amending entries C-II-9 and C-II-61 with retrospective effect from 1-7-1981 is valid in law ?

27. The process of manufacture of paper based decorative laminated sheets has been succinctly set out by the Apex Court in the case of Collector of Central Excise, Hyderabad V/s. Bakelite Hylam Ltd. reported in 1997(91) E.L.T. (S.C.) as follows:-

> "The manufacturing process of decorative laminated sheets has been described by the manufacturers. Paper is passed through or immersed in a resin bath (phenol formaldehyde resin) so that the paper is impregnated with resin. This paper is then dried. At this stage the paper which is impregnated with resin is known as 'Prepreg - P' ('P' stands for paper). Layers of Prepreg paper are then stacked. The top layer consists of paper which has a decorative design on it and which is impregnated with resin. The sheets of papers so stacked are then pressed together in a hydraulic press applying pressure and heat to make a laminated sheet. In the process, the resin passes through the pores of paper and acts as a binder. The end produce is a hard rigid sheet which is impact resistant and is unaffected by heat or moisture. These decorative laminated sheets are sold in the market and they are commonly used for surfacing of furniture. "

28. Thus, 'paper based decorative laminated

sheets' (the goods in question), though made of paper it is a commercially distinct product having characteristics different from paper. The dispute is, whether the goods in question (prior to amendment) were classifiable under entry C-II-9 as 'paper board / coated board' or under entry C-II-61 as 'plastic laminates'.

29. Neither Entry C-II-9 nor Entry C-II-61, prior to its amendment specifically covered the goods in question. In such a case, how the product was known in the trade at the relevant time assumes importance. It is an undisputed fact that since inception the goods in question were considered to be laminated sheets covered under entry C-II-61. The petitioners have sold the goods in question since inception to various customers as laminated sheets covered under entry C-II-61 attracting tax at 12%. Various customers of the petitioners to whom said liability was passed on, have accepted that liability and paid tax at 12%. Other manufacturers who started manufacturing similar goods subsequent to the petitioners have also sold the goods in question under Entry C-II-61 and even their customers have accepted that the goods in question are laminated sheets covered under entry C-II-61 and paid tax at 12%. Accordingly, the returns filed by the petitioners and other manufacturers were

accepted and assessment orders were passed from time to time. Thus, it cannot be disputed that since inception for nearly a decade, the goods in question were known in the trade as laminated sheets covered under entry C-II-61 attracting 12% sales tax.

30. It is only after the decision of CEGAT in the year 1988 in the case of Melamine Fibres Limited (supra), the petitioners and other manufacturers for the first time started claiming that the goods in question are paper board / coated board classifiable under Entry C-II-9 and not under entry C-II-61. It is pertinent to note that the decision of CEGAT in the case of Melamine Fibres Limited (supra) related to interpretation of the entries under the Central Excise Act and not under the B.S.T. Act. Apart from the fact that the entries under the Central Excise Tariff are totally different, it is well settled in law that a situation contemplated in one statute cannot in the absence of any express or clear intendment be made to apply or be given effect while applying the provisions of another statute. Moreover, even the CEGAT ruling under the Central Excise Act is not to the effect that ‘paper based decorative laminated sheets’ are ‘paper board or coated board’ as contended by the petitioners. All that is held in that case is that the goods in question are not classifiable as ‘plastic sheets’

under item 15A(2) of the Central Excise Tariff but are classifiable under the residuary entry 68 of the Central Excise Tariff. Prior to amendment, Entry C-II-61 referred to 'plastic laminates' and not 'plastic sheets'. Therefore, the decision rendered under the Central Excise Act has no relevance in interpreting the words 'plastic laminates' in entry C-II-61.

31. However, in view of the fact that several applications for refund, revision, determination of the disputed question of law were filed by the petitioners and other manufacturers based on the above decision of CEGAT, the legislature with a view to put an end to the controversy, though it fit to amend the entries C-II-9 and C-II-61 with retrospective effect from 1-7-1981, so as to remove the ambiguity, if any, arising on account of the decision rendered by the CEGAT under the Central Excise Act.

32. The first contention of the petitioners is that by the impugned legislation the legislature has sought to impose a new impost retrospectively. There is no merit in this contention, because from 1-7-1981 admittedly, the goods in question were taxed at 12% under Entry C-II-61 and even after the amendment, the goods in question continue to be

taxed at 12% under entry C-II-61. By the impugned legislation, laminated sheets impliedly included in the word ‘plastic laminates’ are expressly brought out by amending the entries retrospectively. The concluded assessments are not at all affected by the retrospective amendment. In fact, by the retrospective amendment, the tax liability at 12% already incurred on the goods in question is reiterated. Therefore, the argument of the petitioners that the amendment purports to levy new impost or create new liability with retrospective effect is devoid of any merit.

33. It is contended that prior to the retrospective amendment, the goods in question were classifiable as paper board / coated board under Entry C-II-9 at 6% and not as ‘plastic laminates’ under entry C-II-61. It is contended that merely because the petitioners and other manufacturers have erroneously accepted the assessment of the goods in question under entry No.C-II-61 at 12% instead of entry C-II-9 at 6%, the legislature cannot retrospectively amend the entries so as to enhance the tax liability of the goods in question from 6% to 12% retrospectively. The submission is that, if there was no amendment then the assessment of the goods in question already made would have been revised in the light of the decision of CEGAT and

taxed at 6% and in that event the petitioners would have been legitimately entitled to claim refund of 6% tax out of the tax at 12% already paid by the petitioners pursuant to the erroneous assessment order. There is no merit in this contention because, firstly, as per the provisions prior to the amendment, goods in question have been in fact assessed under entry C-II-61 at 12% and the said assessments have attained finality. Secondly, the fact that the petitioners have sought revision of the said assessments belatedly, based on the decision of CEGAT in the case of Melamine Fibres Ltd. (supra), it cannot be presumed that the concluded assessments would be revised and the goods in question would be assessed under entry C-II-9, especially when the Tribunal in the aforesaid case has not held that the goods in question are classifiable as ‘paper board / coated board’. Thirdly, there is no material on record to show that the goods in question were or are commercially known in the trade as paper board / coated board so as to classify the same under entry C-II-9. Therefore, the contention of the petitioners that the goods in question were classifiable as paper board / coated board at 6% under entry C-II-9 and by the impugned legislation, the State has purported to tax the goods in question at 12% with retrospective effect cannot be sustained.

34. Strong reliance was placed on the decision of the Apex Court in the case of Shri Krishna Enterprises (Supra) by the Counsel for petitioners. That decision is distinguishable on facts. In that case, by amending the A.P. General Sales Tax Act the benefit contemplated by the forty-sixth amendment was extended upto the date of the State Legislation. As a result of the amendment, the petitioners therein were required to satisfy the designated authority that no tax has been collected before the forty-sixth amendment. Without giving any opportunity to the petitioners therein, tax was levied and, therefore, the Apex Court set aside the assessments and directed the A.O. to give an opportunity to the petitioners. While disposing of the review petition filed by the State, the Apex Court held that since the incidence of Sales Tax is ordinarily passed on to the customer, by a retrospective amendment liability cannot be created without affording any opportunity to pass-on the incidence of the tax. The above decision has no relevance to the facts of the present case, because the tax liability as per assessment was at 12% and even after amendment the tax liability continues to be at 12%. There is no additional liability imposed by the retrospective amendment. Hence, the decision of the Apex Court in the case of Shri Krishna

Enterprises is distinguishable on facts.

35. Similarly, the decision of the Kerala High Court in the case of Mega Traders (supra), decision of Karnataka High Court in the case of S. Kallappa & Sons (supra) and the decision of the West Bengal Sales Tax Tribunal in the case of V.J. Suraiya (supra), are all distinguishable on facts because in all these cases additional liability was sought to be created by the retrospective amendment, whereas in the case in hand additional liability is not created by the retrospective amendment.

36. The next contention of the petitioners is that the levy imposed by the retrospective amendment is arbitrary, discriminatory & unreasonable and is liable to be quashed and set aside on the ground of hostile discrimination. Relying on various decisions delivered by the Commissioner of Sales Tax, and also a decision of the Apex Court in the case of Arya Vaidya Pharmacy (supra), it is contended that even after the retrospective amendment if laminated file board are held classifiable under Entry C-II-9 attracting 6% tax, there is no reason as to why the paper based decorative laminated sheets should be made taxable under Entry C-II-61 attracting 12% tax. The submission is that within the class of products

manufactured from paper, the legislature cannot discriminate and tax one product at a lower rate and another product at a higher rate. There is no merit in this contention because, there is no material on record to suggest that laminated file Board and paper based decorative laminated sheets belong to the same class or category. On a plain reading of entry C-II-61, it is clear that the word 'plastic laminates' is wide enough to cover laminated sheets and in fact it was so understood in the trade as also the sales tax authorities in all these years. As the petitioners and other manufacturers have raised several disputes belatedly, based on the decision of CEGAT in the case of Melamine Fibres Limited, the legislature by the impugned legislation brought out clearly that lamination sheets including lamination sheets which are used for surface lamination of table tops, furniture, panels, partitions or for like purposes shall always be deemed to be covered under entry C-II-61 and what was covered under entry C-II-61 shall always be deemed to be excluded from entry C-II-9. Thus, by retrospective amendment what was implicit is made explicit and such a clarificatory amendment cannot be said to be arbitrary or discriminatory.

37. Reliance placed on the decision of the Apex Court in the case of Arya Vaidya Pharmacy (supra) is

misplaced because in that case arishtams & asavas though identified as medicinal preparations were taxed differently. In the present case, laminated sheets whether made of paper or not were and are covered under entry C-II-61. Sale of the goods in question whether by petitioners or other manufacturers have been uniformly taxed at 12% under entry C-II-61. Similarly, sale of the goods in question whether used for surface lamination of table tops, furniture, panels etc. or not, they are taxed uniformly at 12%. Hence, the decision of the Apex Court in the case of arya Vaidya Pharmacy does not support the case of the petitioner.

38. Strong reliance was placed on the decision of the A.P. High Court in the case of Srinivasa Poultry & Cattle Feed Private Limited (supra). In that case, a notification issued under the A.P. General Sales Tax Act granted exemption of tax on sale of poultry feed manufactured from out of the ingredients which have suffered tax in the State or which were exempt from tax in the State. The effect of the notification was that there were two different prices for the very same poultry feed depending upon the ingredients used in the manufacture of the said poultry feed. It was held that the poultry feed should be subjected to the same rate of tax irrespective of the manner in which

it is manufactured. In the present case, the rate of tax on sale of the goods in question, is 12% whether the same is used for surface lamination of table tops, furniture, panels, partitions etc. or not. Merely because Entry C-II-61 (ii) refers to laminates or lamination sheets other than those covered by sub-entry (i) of the kind used for surface lamination of table tops, furniture, panels, partitions or for like purposes, it cannot be said that there is hostile discrimination especially when the tax levied is 12% on lamination sheets whether used for the purposes set out in entry C-II-61 (ii), or not. As stated earlier, Entry C-II-61 relating to plastic laminates was always considered to include laminates or lamination sheets and accordingly the assessments were made. It is only when the petitioners and other manufacturers sought to argue to the contrary based on the decision of CEGAT in the case of Melamine Fibre Limited (supra), the legislature with a view to put an end to the controversy sought to amend the entries retrospectively, although the said decision rendered under the Central Excise Act had no relevance while interpreting the provisions of the B.S.T. Act. In these circumstances, it cannot be said that there is no intelligible differentia or that the impugned legislation suffers from vagueness or arbitrariness.

39. The argument of the petitioners that the very fact that the legislature chose to amend the Entry C-II-9 with retrospective effect from 1-7-1981 shows that upto the date of amendment, the goods in question were taxable at 6% under Entry C-II-9 is also without any merit, because, by the retrospective amendment, none of the items set out in Entry C-II-9 have been deleted. What is done by the retrospective amendment is to clarify that the items covered under Entry C-II-61 were never covered under Entry C-II-9. In other words, by retrospectively amending entry C-II-9 it is clarified that the goods covered under Entry C-II-61 were always intended to be excluded from Entry C-II-9.

40. Once it is held that the impugned legislation is clarificatory and the retrospective amendment does not affect the assessments made in the past, the question of granting refund to the petitioners does not arise. The fact that the petitioners have refunded tax to their customers in anticipation of getting refund cannot be a ground to invalidate the impugned legislation which is otherwise valid.

41. The next contention of the petitioners is that no reasons are given as to why the entries

C-II-9 and C-II-61 have been amended with retrospective effect from 1/7/1981. As rightly contended by Mr.Nair, the amendment is made with retrospective effect from 1/7/1981 because from that day entry C-II-61 relating to 'plastic laminates' came into force. The goods in question were taxed under entry C-II-61 as plastic laminates with effect from 1st July, 1981. In these circumstances, the amendment to entry C-II-9 and C-II-61 with retrospective effect from 1/7/1981 cannot be said to be arbitrary or unreasonable.

42. In the light of the above findings, we do not consider it necessary to deal with numerous decisions cited by counsel on both sides which are all distinguishable on facts.

43. For all the aforesaid reasons, we find it difficult to accept the arguments advanced on behalf of the petitioners regarding the constitutional validity of retrospective amendment to entry C-II-9 and C-II-61.

44. In the result, the writ petition fails. Rule is discharged with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)